

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

*Registry's translation,  
the French text alone  
being authoritative.*

**117th Session**

**Judgment No. 3324**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms D. L. M. against the Customs Co-operation Council (CCC), also known as the World Customs Organization (WCO), on 21 December 2012, the Organization's reply of 14 March 2013, the complainant's rejoinder of 21 May and the WCO's surrejoinder of 28 June 2013;

Considering the applications to intervene filed on 22 May 2013  
by:

A. d. T., C.-A.	C., C.F.J.M.
A., H.	D., O.
A., M.W.	D. J., P.
B., M. J.	D. J., C.E.
B., G.F.M.	D. N., M.
B., J.	D., J.
B., T.	D., I.
B., P.C.E.	F., M.
B., S.	G., M.-F.
B., M.	H., S.
B., B.	H., T.
C., T.	L. T., T.
C., B.G.	L. N., P.
C., H.Y.S.	L., A.
C., J.	M., L.

M., K.	P., N.
M. D., P.A.	S., N.P.
N., M.	S., G.
P., P.	T., L.
P., D.	V. T., T.-T.;

Considering the applications to intervene filed on 7 June 2013 by:

A., B.	M., B.
A., Y.	N., S. F.
G., K.	O., J.
H., S.	R., P.
J., P.	R., A.
M., C.	S., I.;

Considering the applications to intervene filed on 23 August 2013 by:

A., S.	L. A., H.X.
D. K., C.	M., A.
H., C.-R.	N.-K., M.
K., S.	S., S.P.;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. Since 1981, pursuant to a decision of the WCO Council adopted in 1979, the WCO has been using the system of the Co-ordinated Organisations as a standard of reference for the adjustment of staff pay. Article 27.1(a) of the Staff Manual stipulates that “[t]he Secretary General is authorized to implement salary and allowance changes recommended by the Co-ordinating Committee on Remuneration [of the system of the Co-ordinated Organisations] as soon as these become known, subject to the prior agreement of the Finance Committee and the availability of adequate appropriations within the Organization’s budget”.

The complainant joined the WCO in Brussels (Belgium) on 1 December 2008 as a Senior Clerk at grade B3.

In its 213th report, dated 19 October 2011, the Co-ordinating Committee on Remuneration of the system of Co-ordinated Organisations (hereafter “the CCR”) recommended that the salaries of officials based in Belgium should be increased by 2.2 per cent as from 1 January 2012.

At its 91st session, held in November 2011, the Finance Committee of the WCO, noting that there was no clear majority for or against the adoption of a 2.2 per cent increase in the salaries of WCO officials, decided to re-examine the issue at its next session. At its 92nd session, held in April 2012, the Finance Committee recommended that these salaries should be raised by 1.1 per cent as from 1 January 2012. At its 119th and 120th sessions in June 2012, the WCO Council decided to approve this recommendation of the Finance Committee.

When the complainant received her payslip for July 2012 on 19 July, she found that her salary had gone up by 1.1 per cent.

On 8 August 2012 the complainant asked the Secretary General to amend the Council’s decision so as to increase her monthly salary by 2.2 per cent as from 1 January 2012. On 6 September the Secretary General replied that he was not authorised to reconsider a decision taken by the Council, since it was his duty only to give effect to the recommendations approved by it. On 20 September the complainant asked the Secretary General to convene the Appeals Board. On 4 October 2012 the Secretary General explained that, as the Council was the only body competent to approve recommendations of the Finance Committee regarding salary adjustments, he had decided under Article 59(b) of the Staff Manual to authorise her to apply directly to the Tribunal. The complainant filed her complaint on 21 December 2012.

B. The complainant draws attention to the wording of Article 27.1 of the Staff Manual and submits that the WCO, by deviating from the reference system, has departed from the strict application of the rules

which it laid down itself, although it had no reason to do so and no provision is made for this possibility. In her view, the WCO has therefore breached the principle of *tu patere legem quam ipse fecisti*. She adds that in departing from the above-mentioned system, although it had approved the adjustments proposed by the CCR for the years 2007 to 2012, the WCO breached the principles of good faith and of the protection of legitimate expectations.

Moreover, the complainant submits that, according to the Tribunal's case law, where the methodology refers to an external standard but grants discretion to the governing body to depart from that standard, the organisation has a duty to state the reasons for such departure. She observes that the Finance Committee referred to the difficult financial and economic situation experienced by some member States of the WCO in order to justify its refusal to follow the CCR's recommendation, and she submits that a desire to achieve savings at the expense of WCO officials is not an acceptable reason to deviate from that recommendation. The complainant therefore takes the WCO to task for not having given an objective reason for its decision to depart from the rules governing salary adjustments.

Lastly, she considers that the arbitrary gap between the salary increase recommended by the CCR and that actually adopted by the WCO is a breach of her acquired rights.

The complainant asks the Tribunal to set aside the decision to increase officials' salaries by only 1.1 per cent and to draw all the legal consequences therefrom by granting her "the full amount of the annual adjustment due since 1 January 2012".

C. In its reply the WCO states that the CCR's recommendations are not binding and emphasises that there is no statutory text in force at the WCO which requires them to be applied automatically. Referring to Article 27.1(a) of the Staff Manual, it contends that the Finance Committee is entitled not to approve a CCR recommendation if it is not in agreement with it, or if the appropriations within the WCO's budget are inadequate.

The WCO further submits that, although the Finance Committee can approve or refuse a CCR recommendation without having to state the reasons for this, “valid and extensive” reasons were given for the decision to increase officials’ salaries by 1.1 per cent as from 1 January 2012. It puts forward three reasons for this decision: the exceptional circumstances caused by the world economic crisis, the need to make savings in the interests of the WCO, the financial position of which is “worrying”, and the wish to display solidarity with member States by adopting a moderate increase in salaries. Lastly, citing the Tribunal’s case law regarding acquired rights, the WCO considers that the complainant may not claim that, when she was recruited, the periodic rate of adjustment of her salary constituted a fundamental provision which persuaded her to take up her appointment. It emphasises that the aforementioned decision is a one-off measure justified by exceptional circumstances which in no way jeopardises the stability of the complainant’s terms of employment.

D. In her rejoinder the complainant enlarges on her pleas. She endeavours to show that the Organization may not depart from the CCR’s recommendations which, according to the terms of reference of the Finance Committee, must be applied “automatically, in full and immediately”. She also submits that the factors allegedly forming the basis of the WCO’s decision to increase officials’ salaries by 1.1 per cent are not “lawful, sufficient or known to the personnel”.

E. In its surrejoinder the WCO maintains its position and enlarges on its pleas. It considers that it is “inconceivable” that the Secretary General should “immediately” apply a recommendation from an outside body, and that the Finance Committee’s role is restricted to “finding a sufficient budget to cover the adjustments recommended by the CCR”. In addition, it states that the departure from the CCR’s recommendation was justified by its duties of care, good governance and sustainability.

## CONSIDERATIONS

1. The complainant joined the WCO on 1 December 2008 as a Senior Clerk at grade B3. Her appointment was renewed on 1 December 2011 for a three-year period ending on 30 November 2014.

2. In her complaint filed on 21 December 2012 she impugns the decision to grant her a salary adjustment of only 1.1 per cent for 2012 instead of the 2.2 per cent which the Co-ordinating Committee on Remuneration (CCR) of the Co-ordinated Organisations recommended for officials serving in Belgium.

3. The WCO is taxed with not applying the adjustment recommended by the CCR, as it was required to do under the applicable texts, which did not permit any departure therefrom in this case.

4. It is clear from the submissions in the file that since 1981, in accordance with a decision of the WCO Council adopted in 1979, the amount of officials' salary and of the allowances they may claim is based on the reference system of the Co-ordinated Organisations. The provision concerning the annual adjustment of salaries reads:

### Article 27.1 of the Staff Manual

- “(a) The Secretary General is authorized to implement salary and allowance changes recommended by the Co-ordinating Committee on Remuneration as soon as these become known, subject to the prior agreement of the Finance Committee and the availability of adequate appropriations within the Organization's budget.
- (b) The Secretary General shall report to the Council on the action taken at the earliest opportunity.
- (c) Salaries and allowances, including cost of living allowance, shall be aligned on those applicable to staff of the Co-ordinated Organizations working in Belgium.”

5. For 2012 the CCR recommended a pay rise of 2.2 per cent for officials serving in Belgium.

However, at the end of its 92nd session, held from 2 to 5 April 2012, the Finance Committee of the WCO recommended an increase of 1.1 per cent backdated to 1 January 2012.

The WCO Council approved the Finance Committee's recommendation at its 119th and 120th sessions in June 2012.

6. The complainant discovered that the payslip which she received on 19 July 2012 showed an adjustment of 1.1 per cent to her salary. On 8 August 2012 she asked the Secretary General to amend his administrative decision setting the amount of the adjustment to her salary. The Secretary General rejected this request on 6 September 2012.

In response to her request for an internal appeal, she was advised that the Secretary General was unable to review a matter within the competence of the WCO Council and that she was authorised to apply directly to the Tribunal.

7. The complainant asks the Tribunal to set aside the impugned decision and to draw all the legal consequences therefrom, by granting her the full amount of the annual adjustment of her salary due on 1 January 2012.

8. In support of her complaint she enters three pleas concerning breach of the principle of *tu patere legem quam ipse fecisti*, breach of the obligation to state the reasons for administrative acts producing an adverse effect and breach of acquired rights, respectively.

9. Sixty other officials who consider that they are in the same situation as the complainant have submitted applications to intervene.

10. The WCO argues that the complaint should be dismissed as unfounded.

11. The complainant taxes the WCO with having breached the principle of *tu patere legem quam ipse fecisti* by deviating from the reference system for the adjustment of staff pay for 2012, whereas the applicable provision of the statutory text permits no departure from it.

12. Relying on the aforementioned Article 27.1 of the Staff Manual, the complainant submits that the WCO's obligation to align salaries and allowances, and therefore salary adjustments, on those applicable to staff of the Co-ordinated Organisations in Belgium is a fundamental principle admitting of no exceptions. Hence the Organization, in deciding to deviate from the reference system for the adjustment of salaries for 2012, where no provision was made for any such departure, departed without reason from the strict application of the rules which it had laid down itself and thus breached the principle of *tu patere legem quam ipse fecisti*. Moreover, since the Organization had already adopted the method of adjustment proposed by the CCR for the years 2007-2012, it could no longer call into question the adjustment adopted for 2012.

13. The complainant adds that, even if the WCO were allowed to depart from the CCR's proposals, it had to give objective and not arbitrary reasons for its non-application of the reference method in force.

14. In its reply the WCO acknowledges that "the Council decision of 1979 and Article 27.1 of the Staff Manual are indeed the currently applicable texts governing the adjustment of officials' salaries and that they have never been repealed". It considers, however, that the reference system of the Co-ordinated Organisations can never replace the sovereign appraisal of the WCO, that "the CCR's recommendations regarding salary adjustments are, as that term indicates, only recommendations", that, by definition, "they are not at the outset 'positive law binding' the Organization" and that it is only after a recommendation from the Finance Committee and the subsequent approval thereof by the Council that they become an obligation for the WCO. The Organization is therefore of the opinion that, in the absence of a Council decision on the matter following a recommendation from the Finance Committee, these CCR recommendations are not binding in any way. For the WCO, "the purpose of CCR recommendations is solely to serve as a reference and a guide". It takes the view that the Finance Committee must be allowed a certain margin of discretion to decide whether and to what



extent it is advisable to apply the recommended level of salary adjustment.

It states that the complainant misconstrues the above-mentioned Article 27.1(a), because it permits the Committee not to authorise a salary adjustment when at least one of the following two conditions is met:

- if the Finance Committee disagrees;
- if budgetary appropriations are inadequate.

15. The Tribunal will not accept this interpretation, which makes the Finance Committee's disagreement, for which no reasons need to be given, a condition for refusing the adjustment recommended by the CCR. Such an interpretation confers discretion on the Finance Committee to decide, in an arbitrary manner, whether or not to authorise the application of a salary adjustment, which would completely contradict the principles established by the Tribunal's case law.

16. According to the case law recalled in detail in Judgments 1821 (under 7) and 1912 (under 13):

“The principles governing the limits on the discretion of international organisations to set adjustments in staff pay have been well established in a number of judgments. Those principles may be concisely stated as follows:

- (a) An international organisation is free to choose a methodology, system or standard of reference for determining salary adjustments for its staff provided that it meets all other principles of international civil service law: Judgment 1682 [...] in 6;
- (b) The chosen methodology must ensure that the results are “stable, foreseeable and clearly understood”: Judgments 1265 [...] in 27 and 1419 [...] in 30;
- (c) Where the methodology refers to an external standard but grants discretion to the governing body to depart from that standard, the organisation has a duty to state proper reasons for such departure: Judgment 1682, again in 6;
- (d) While the necessity of saving money may be one valid factor to be considered in adjusting salaries provided the method adopted is objective, stable and foreseeable (Judgment 1329 [...] in 21), the mere desire to save money at the staff's expense is not by itself a

valid reason for departing from an established standard of reference: Judgments 1682 in 7 and 990 [...] in 6.” (See Judgment 1912, under 13.)

17. It must first be emphasised that, in the instant case, the applicable text clearly states that “salaries and allowances, including cost of living allowance, shall be aligned on those applicable to staff of the Co-ordinated Organizations working in Belgium”, that “[t]he Secretary General is authorized to implement salary and allowance changes recommended by the Co-ordinating Committee on Remuneration as soon as these become known, subject to the prior agreement of the Finance Committee and the availability of adequate appropriations within the Organization’s budget”; and that “[t]he Secretary General shall report to the Council on the action taken at the earliest opportunity”.

18. On analysing the provision quoted above, the Tribunal finds that, contrary to the WCO’s opinion, the Organization is bound to apply the adjustment recommended by the CCR, unless it can give a reason which is valid in the light of the case law cited above.

19. The only question which arises in the instant case is whether there is a valid reason for the decision to increase the salaries of WCO officials by 1.1 per cent instead of the 2.2 recommended by the CCR.

20. The Organization justifies the impugned decision by the need to achieve savings for budgetary reasons, mainly on account of exceptional circumstances due to the world economic crisis.

However, in the light of the Tribunal’s case law as cited above, the goal of achieving savings does not in itself constitute a valid reason for depriving staff of a salary adjustment to which they are entitled.

Although the Organization also contends that a 2.2 per cent increase in staff pay “might have jeopardised the balancing of the WCO budget in the medium or long term and might have led to the adoption of restrictions with a heavier impact on the personnel”, the evidence in the file shows that it is by no means certain that this

salary adjustment would have placed the Organization in a particularly difficult position during the financial year in question. The Tribunal will not accept the argument that the Organization's budget might be thrown out of balance "in the medium or long term", since at this stage this is a purely hypothetical situation which might arise in the future.

21. Since none of the Organization's arguments clearly demonstrates that its financial situation was such that it could depart from the obligation to apply the recommended adjustment, for no valid reason it breached its duty to comply with the text which it had adopted.

22. It follows from the foregoing, without there being any need to rule on the two other pleas, that the impugned decision must be set aside.

The complaint and the applications to intervene must therefore be allowed.

23. The case shall be remitted to the Organization in order that it calculate the amount of the salary adjustment for 2012 in accordance with the recommendation from the CCR of the Co-ordinated Organisations.

24. As the complainant succeeds, she is entitled to costs set at 1,000 euros.

#### DECISION

For the above reasons,

1. The impugned decision is set aside.
2. The case is remitted to the WCO for it to proceed as indicated under 23 above.

3. The WCO shall pay the complainant costs in the amount of 1,000 euros.

In witness of this judgment, adopted on 20 February 2014, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 April 2014.

CLAUDE ROUILLER  
SEYDOU BA  
PATRICK FRYDMAN  
DRAŽEN PETROVIĆ

